In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1162

JOHN EL STONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a trial without a jury, petitioner was convicted on six counts of an indictment charging violations of 26 U.S.C. 7203. Counts 1 and 4 charged that he willfully failed to pay the occupational tax required by 26 U.S.C. 4411; counts 7 and 10 charged that he willfully failed to register as required by 26 U.S.C. 4412; count 15 charged conspiracy to conduct a wagering business without paying the occupational tax; and count 16 charged that he and two others who owed an excise tax on wagers imposed by 26

U.S.C. 4401 willfully failed to file a return. The court sentenced petitioner to sixty days in prison and fined him $1000 on count 1. He was placed on probation and fined $1000 on each of the other counts, the sentences of probation to run concurrently.

Petitioner claims that Section 4411 and 4412 of Title 26 violate the privilege against self-incrimination. Since this issue is before this Court in *Costello* v. *United States*, No. 826, certiorari granted, March 21, 1966, we suggest that it would be appropriate to defer action on the instant petition pending disposition of the *Costello* case. However, count 16 based on failure to pay the excise tax is unaffected by these considerations.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

APRIL 1966

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 214512 749